

9-11-2012

# Shapley v. Centurion Life Ins. Co. Appellant's Brief Dckt. 39784

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

WILLIAM S. SHAPLEY, an individual,

Plaintiff-Appellant,

vs.

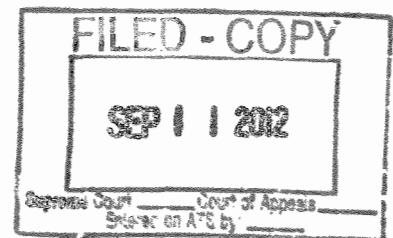
CENTURION LIFE INSURANCE  
COMPANY, a foreign corporation, WELLS  
FARGO FINANCIAL IDAHO, INC., an  
Idaho corporation,

Defendants-Respondents,

JOHN DOES, individually, does I through X,  
and JOHN DOE BUSINESS ENTITIES, does  
I through X,

Defendants.

Supreme Court Docket No. **39784-2012**



**APPELLANTS' BRIEF**

Appeal from the District Court of the Third  
Judicial District for Canyon County

Honorable Thomas J. Ryan, District Judge, presiding

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## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE**

This case poses an interesting question with regards to credit life insurance. Namely, what is the effect of an insurer's failure to issue coverage prior to an applicant's death where 1) Idaho law requires that coverage begin on the date of the indebtedness being insured, 2) the applicant died after the indebtedness but before a policy issued, and 3) there is no evidence that the applicant would not have qualified for the coverage had the company timely processed the application?

This case involves a claim for credit life insurance benefits. Plaintiff and his wife sought credit life insurance in conjunction with a \$57,200.48 real estate loan in 2008. The insurance was to begin on the date the loan closed. Plaintiff's wife died unexpectedly five days after the closing of the loan. When a claim was filed for benefits, the credit life insurance company denied the claim stating that no contract existed as they had not yet "completed underwriting" for Plaintiff's wife prior to her death. There is no evidence in the record that Plaintiff's wife would not have qualified for the coverage.

### **B. COURSE OF THE PROCEEDINGS BELOW**

The Plaintiff filed his case on June 8, 2010. (R Vol. 1, pp. 5-11.) Mr. Shapley alleged breach of contract, bad faith, negligence, intentional infliction of emotional distress, and fraud and misrepresentation. The fraud claim was based on the conduct of Defendant Ellison however the parties stipulated to Ellison's dismissal on July 20, 2011, which effectively dismissed that count. The Defendants filed a motion for summary judgment on July 21, 2011. (R Vol. 2, pp. 232-234.) The District Court issued its Memorandum Decision granting Defendants' Motion for Summary Judgment on November 4, 2011. (R Vol. 2, pp. 277-284.) Final judgment was entered

on November 28, 2011. (R Vol. 2, pp. 302-304.)

The Plaintiff timely sought reconsideration of the District Court's decision pursuant to Rule 11(a)(2). (R Vol. 2, pp. 305-307.) Plaintiff also sought to amend his Complaint to add a count for estoppel on November 23, 2011. (R Vol. 2, pp. 285-301.)

The District Court denied the requested amendment and reconsideration. Specifically, summary judgment on all of Plaintiff's claims was granted holding that no contract of insurance had been in existence between the parties at the time of Barbara Shapley's death. (R Vol. 2, p. 283.)

### **C. STATEMENT OF RELEVANT FACTS**

When Barbara Shapley died of a massive brain hemorrhage on July 15, 2008, she had been married to her husband William (Bill) for 42 years. (R Vol. 1, p. 172) After 30 years spent raising their two children, the Shapleys moved from Ypsilanti, Michigan, to Homedale, Idaho, in 1996. (*Id.*) They started out living in a small trailer home on property they owned. (*Id.*) In the summer of 2008 they decided to obtain a loan to help them build a house. (*Id.*) The Shapleys went to Wells Fargo Financial (Wells Fargo) in Nampa to see about financing in June 2008 where they met with Steve Ellison, an employee of Wells Fargo. (*Id.*) The Shapleys ultimately obtained a real estate loan for \$57,200.48. Between June 20, 2008, and July 10, 2008, the Shapleys provided information and documentation to Wells Fargo in support of their loan application. (R Vol.1, pp. 172-173)

From the very first time that financing was discussed in June, the Shapleys also discussed credit insurance on the loan with people at Wells Fargo. (*Id.*) Steve Ellison testified that credit life insurance was discussed on the Shapleys' first visit to the branch.

Q. Do you remember the first time you met Bill Shapley or his wife?

- A Yes.
- Q Tell me about it.
- A. They came into Wells Fargo Financial, spoke with Kyle first requesting a Loan, and Kyle directed them to me. He gave introductions. And the first question Bill asked was along the lines of, is there insurance on your loans? Or, can I get insurance?
- Q. That was the first question he asked you?
- A. Correct.
- Q. And what did you tell him?
- A. I said we have those options.
- Q. Do you remember giving him options?
- A. Yes.

(R Vol.1, pp. 60-61)

On July 10, 2008, William and Barbara Shapley closed on their loan. (R Vol. 1, p. 102)

The Shapleys provided the necessary information to apply for credit life insurance on their loan to be issued through Centurion Life Insurance Company. (R Vol. 1, p. 110; also R Vol. 1, pp. 172-173) Despite providing information relative to the loan for much of the month preceding the closing of the real estate loan, Wells Fargo didn't have the Shapleys fill out the applications for credit life insurance until the date of closing on the loan.

The insurance had a "proposed effective date of July 10, 2008." (R Vol. 1, p. 110) The document states: "The Term of Insurance starts on the Proposed Effective Date shown above." (R Vol. 1, p. 111) The application materials also contained a "Health Statement" which lists several health-related questions for Bill and Barbara to answer. (R Vol.1, p. 112.) Barbara's answers were all negative, as in not having any prior history of any of the listed medical problems. (R Vol. 1, p. 112) Bill Shapley indicated a prior history of gout. (*Id.*) The "Health Statement" also includes the following promissory language:

"I (We) have read this Insurance Disclosure and Application and received a copy of it. I (We) want the coverage indicated in the schedule and agree to pay the cost of this insurance. If my (our) application is approved, I (we) will be sent a certificate of insurance in approximately 30 days."

(R Vol. 1, p. 112.)

Sadly, on July 11, 2008 – only one day after signing for the loan to build their new home, Barbara Shapley suffered a cerebral hemorrhage. She was hospitalized and passed away on July 15, 2008. (R Vol. 1, p. 117)

After Barbara's death, William Shapley talked to Steve Ellison. Mr. Ellison told Mr. Shapley that the credit life insurance began on the date the loan closed and instructed Mr. Shapley to submit a claim. (R Vol. 1, p.172) Mr. Shapley submitted a claim to Centurian on July 17, 2010. (R Vol. 1, p. 173) After receiving the claim, Centurion instructed Interviews by Underwriters (IBU), to conduct a telephone interview with William Shapley regarding his medical history. (R Vol. 1, p. 128) IBU is a third party company utilized by Centurion to complete its underwriting interviews. (R Vol. 1, p. 127)

### Health Statement

Applicant: Gender ☒ M ☐ F

Height 5'9" ft. 2" in. Weight 190 lbs. Date of Birth: Mo.      Day      Yr.     

Have you used tobacco or nicotine in any form during the past 12 months? ☐ Yes ☒ No

Co-Applicant: Gender ☐ M ☒ F

Height 5'9" ft. 9" in. Weight 150 lbs. Date of Birth: Mo.      Day      Yr.     

Have you used tobacco or nicotine in any form during the past 12 months? ☐ Yes ☒ No

Please answer the following questions regarding your health:

In the past five years have you been told that you had; been treated or had medical tests for; or received medical advice for: high blood pressure, chest pain, stroke, or disease of the heart or blood vessels; cancer or tumor of any kind; epilepsy, mental or nervous disorder; diabetes; lung or respiratory disorder; liver, gastric or intestinal disorder; hepatitis; kidney or urinary tract disorder; disorder of the blood or lymph nodes; neurological or neuromuscular disorder; or any disease of the reproductive organs, including the breasts?

Applicant: ☐ Yes ☒ No

Co-Applicant: ☐ Yes ☒ No

Have you ever been treated for or told by a physician that you had Acquired Immune Deficiency Syndrome, AIDS Related Complex, or a positive test for HTLV-III virus?

Applicant: ☐ Yes ☒ No

Co-Applicant: ☐ Yes ☒ No

In the past five years have you had or been treated for arthritis, gout, bursitis, rheumatism, sciatica; or for injury, pain or disorder of the neck, back or joints?

Applicant: ☒ Yes ☐ No

Co-Applicant: ☐ Yes ☒ No

In the past five years have you had or been treated for a disabling injury or condition, or are you now disabled or not able to work at your usual occupation for any reason?

Applicant: ☐ Yes ☒ No

Co-Applicant: ☐ Yes ☒ No

I (We) understand that this Health Statement is part of the Insurance Disclosure and Application and that the answers to these questions will be used to determine my (our) eligibility for the insurance requested. I (We) authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organization, institution, any consumer reporting agency or person having records or knowledge of me (us) or my (our) health to give the Centurion Life Insurance Company such information. This authorization will be valid for 30 months from the date of signature. You (or your authorized representative) are entitled to receive a copy of this authorization. A photocopy of this authorization is as valid as the original.

The answers to the questions above are true and complete to the best of my knowledge. Untruthful answers may result in denial of coverage or claims.

I (We) have read this Insurance Disclosure and Application and received a copy of it. I (We) want the coverage indicated in the Schedule and agree to pay the cost of this insurance. If my (our) application is approved, I (we) will be sent a certificate of insurance in approximately 30 days.

Signature of Applicant: William T. Shapley Date: July 10-08

Signature of Co-Applicant: Barbara J. Shapley Date: 7-10-08

"Health Statement" R. Vol. 1, pg. 112

After Barbara Shapley's death and claim for benefits, Centurion sent a letter to Mr. Shapley dated July 17, 2008, stating:

“We were very sorry to learn of the death of Mrs. Shapley. Please accept our condolences. Because we were not able to complete underwriting for Mrs. Shapley we have approved credit life insurance for you only.”

(R Vol. 1, p. 142.)

Ultimately the Defendants issued coverage on the loan, but limited it to the life of Bill Shapley. The same July 17th letter from Defendants included a certificate of insurance issued for William Shapley only with a new effective date of July 17, 2008. (*Id.*)

The only reason given in the record Centurion did not approve coverage was that it had not completed the phone interview. (R Vol. 1, p. 128)

- Q. And the reason for not insuring Mrs. Shapley is that it says, "We were not able to complete underwriting for Mr. Shapley"; is that correct?
- A. Yes.
- Q. What was missing?
- A. The interview.
- Q. The interview, okay. Is that it?
- A. Yes.

Centurion stated that had it completed the phone interview of Barbara Shapley, her insurance would have been approved. (R Vol. 1, p. 126)

- Q. Ultimately, Centurion approved Mr. Shapley?
- A. Yes.
- Q. Issued credit life for his loan?
- A. A single, yes.
- Q. When you looked at your underwriting file this morning and you had the documents there for Mr. and Mrs. Shapley, there was no indication that, had she not passed away, Mrs. Shapley would have been approved?
- A. No.

The purpose for the telephone “interview” by Centurion was to ask the same questions answered on the “Health Statement” form filed. (R Vol. 1, p. 127) Nancy Lunn, Centurion’s Claim’s Manager and Underwriting Manager, stated “they would call the applicant then and ask the questions but drill down -- you know, if they get a yes answer, then they will drill down, you

know, what medication do you take, you know, things like that.” (R Vol. 1, p. 127) The interview is solely a creation of Wells’ and Centurion’s internal policies and is not required by any laws or regulations. In fact, the verbal interview is contrary to the insurance regulations of this state governing Credit Life Insurance. Idaho Administrative Procedures Act, 18.01.61.11.14 (“No statement made by a debtor shall be used by the insurer as a basis for denying eligibility for coverage unless such a statement is contained in a written application for insurance signed by the debtor.”).

Finally, it should not be lost on this Court that at the time the Shapleys were seeking credit insurance from Centurion Life Insurance Company through an agent working also as a loan officer for Wells Fargo Financial, it was an entity wholly-owned by Wells Fargo Financial. In fact, all Centurion Life employees were Wells Fargo employees. (R Vol. 1, p. 120, LL. 7-10) As a business in 2008 and 2009, Wells Fargo Financial offered real estate loans, substantially all of which were secured debt consolidation loans, and both prime and nonprime auto secured loans, unsecured loans and credit cards. (See, [https://www.wellsfargo.com/downloads/pdf/invest\\_relations/wf2009annualreport.pdf](https://www.wellsfargo.com/downloads/pdf/invest_relations/wf2009annualreport.pdf) at p.59)

In its Annual Report for 2009, Wells Fargo represented that Wells Fargo Financial had “\$25.8 billion and \$29.1 billion in real estate secured loans at December 31, 2009, and 2008, respectively” and “\$16.5 billion and \$23.6 billion in auto secured loans and leases at December 31, 2009, and 2008, respectively” and “\$8.1 billion and \$8.4 billion in unsecured loans and credit card receivables at December 31, 2009, and 2008, respectively.” (*Id.*) The designee for Centurion Life Insurance Company (a Wells Fargo Financial employee) testified under oath that 40% of eligible loans sold by Wells Fargo have credit insurance attached. (R Vol.1, pp.122-123.)

To date, Centurion and Wells have not made any payment on the claim for Barbara

Shapley's death. In fact, it states it would handle this claim exactly the same way if it were to happen again. *Id.* at 45:14-16.

- Q. If it happened again today, it would be handled the exact same way?  
A. Yes.



### **ISSUES PRESENTED ON APPEAL**

1. Whether or not the District Court erred in granting Defendants' combined Motion for Summary Judgment on the basis that no contract of insurance existed.
2. Whether or not the District Court erred in denying Plaintiff's motion to amend to include a count for equitable estoppel.

## ARGUMENT

### I. THE DISTRICT COURT IMPROPERLY GRANTED SUMMARY JUDGMENT ON ALL OF PLAINTIFF'S CLAIMS FINDING THAT NO CONTRACT OF INSURANCE HAD ISSUED TO BARBARA SHAPLEY.

#### A. The standard of review is *de novo*.

“When reviewing a grant of summary judgment, this Court applies the same standard of review used by the district court in ruling on the motion.” *Security Financial Fund, LLC v. Thomason*, 282 P.3d 604 (Idaho, 2012); citing *Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 441, 235 P.3d 387, 391 (2010). A grant of summary judgment is only warranted where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c).

The moving party bears the burden of proving the absence of an issue as to any material fact. *Blickenstaff v. Clegg*, 140 Idaho 572, 577, 97 P.3d 439, 444 (2004). The facts must be liberally construed in favor of the non-moving party. *Renzo v. Idaho State Dep't of Agric.*, 149 Idaho 777, 779, 241 P.3d 950, 952 (2010). At summary judgment, “[t]he issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995) (quoting *Greenfield v. Suzuki Motor Co. Ltd.*, 776 F. Supp. 698, 701 (E.D.N.Y. 1991)).

#### B. As sellers of insurance, Defendants are obligated to act honestly and equitably.

“The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all concerned in

insurance transactions, rests the duty of preserving the integrity of insurance.” I.C. § 41-113.

Indeed, insurance as a business is intertwined with life in modern society. Many kinds of insurance are required and the myriad of different types of insurance and coverages have led states to adopt rules peculiar to the insurance industry.

**1. Credit Life insurance can only be offered if it complies with state laws and regulations**

State regulation of insurance policy terms and rates has been in existence for decades. State insurance regulators created the National Association of Insurance Commissioners<sup>1</sup> (NAIC) in 1871 to address the need to coordinate regulation of multistate insurers. (See, [http://www.naic.org/index\\_about.htm](http://www.naic.org/index_about.htm).) The first major step in that process was the development of uniform financial reporting by insurance companies. One often cited justification is that heavy regulation is necessary because joint insurance company activities in developing standard policy terms and rates are exempt from federal antitrust laws. See 15 U.S.C. §§ 1011-13. Courts in Idaho have long-recognized that the relationship between insured and insurer is characterized by public policy concerns. See generally, *White v. Uniguard*, 112 Idaho 94, 730 P.2d 1014 (1986).

Credit life insurance is a particularly peculiar insurance product. It is generally defined as insurance issued to a creditor (lender) to cover the life of a debtor (borrower) for an outstanding loan. ([http://www.naic.org/consumer\\_glossary.htm](http://www.naic.org/consumer_glossary.htm)) In this case, the “creditor policyholder” was “Wells Fargo Financial Idaho, Inc.” (R Vol.1, p. 110.) Bill and Barbara Shapley were the

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<sup>1</sup> Headquartered in Kansas City, Mo., the National Association of Insurance Commissioners (NAIC) is a voluntary organization of the chief insurance regulatory officials of the 50 states, the District of Columbia and five U.S. territories. The NAIC's overriding objective is to assist state insurance regulators in protecting consumers and helping maintain the financial stability of the insurance industry by offering financial, actuarial, legal, computer, research, market conduct and economic expertise. Formed in 1871, the NAIC is the oldest association of state officials. For more than 135 years, state-based insurance supervision has served the needs of consumers, industry and the business of insurance at-large by ensuring hands-on, frontline protection for consumers, while providing insurers the uniform platforms and coordinated systems they need to compete effectively in an ever-changing marketplace.

debtors. (*Id.*) “The whole purpose of credit life insurance is to provide funds to pay off a specified debt of the insured if he should die while the debt is outstanding.” *Klepper v. Standard Life Ins. Co.*, 60 Cal. App. 3d 470, 472, 131 Cal. Rptr. 519, 521 (Ct. App. 1976). Credit life insurance is treated very differently than other types of insurance and specially regulated. Idaho Code 41-2301, *et. seq.* In a credit life transaction, the issuance of the policy is closely intertwined with the credit transaction.

Credit life insurance has been recognized to be something different than the normal policy of life insurance. Generally, a policy of life insurance is a stand-alone contract whose purpose is to provide a sum of money to the named beneficiary upon the death of the listed insured. A credit life insurance policy, on the other hand, ***is an integral part of a financial transaction involving a loan***, consumer financing arrangement, or other form of credit obligation, with repayment of the anticipated obligation typically extending over a number of months or years. ***As a part of the transaction***, a policy of life insurance is arranged on the life of the debtor with the creditor named as beneficiary. ***The purpose of the policy is to retire the balance of a debt should the debtor die prior to the end of the contemplated repayment period.***

*Agnew v. Washington Mut. Fin. Group, LLC.*, 244 F. Supp. 2d 672, 675 (N.D. Miss. 2003)

(emphasis added). “The issuance of a policy is part of the credit transaction with the only purpose being the protection of the loan amount during the repayment period.” *Id.*

Often, as is the case here, the insurer is part of the same institution as the creditor and the premiums for the policy are charged monthly concurrent and as part of the loan repayment. (R. Vol.1, pg. 110-112.) Idaho has adopted the various uniform acts and regulations promulgated by the NAIC regarding credit life and credit disability insurance. IDAPA 18.01.61 – Credit Life and Disability Insurance governs multiple aspects of offering this type of insurance in Idaho. For instance, the Regulation at 012, 013, and 014 governs policy forms, determination of reasonable “loss ratios”, and “prima facie rates” that can be charged by a company. There is really no comparison between credit life insurance and other, more typical, types of life insurance and this

should be taken into consideration by the Court.

**i. Idaho Code §41-2307 requires that the term of credit life insurance offered in Idaho begin on the date of the indebtedness.**

Idaho Code 41-2301, *et. seq.*, contains the statutory regulation of credit life insurance. Section 41-2307 requires that credit life insurance begin on the date the indebtedness is incurred unless proof of insurability is required and that proof is issued more than thirty days following the application. “The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, *commence on the date when the debtor becomes obligated to the creditor...*” (Idaho Code §41-2307)(emphasis added). The statute allows for a later effective date only if evidence of insurability is to be provided thirty days after the indebtedness begins. *Id.* Such statutory provisions are as much a part of the credit disability insurance policy as though they were written therein. *First Sec. Bank of Bozeman v. Goddard*, 181 Mont. 407, 413-14, 593 P.2d 1040, 1044 (1979).

The requirement that the term of the policy begin at the time the indebtedness begins coincides with the requirement that the insurer provide the insured with a certificate of insurance at the time of closing on the loan. “The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.” (Idaho Code § 41-2308 (3)) Therefore, the certificate should have been provided to the Shapleys at closing.

**ii. Idaho credit insurance regulations limit the evidence a company may use to determine eligibility to written applications signed by the insured.**

The Defendants had a legal obligation to commence the policy coverage on July 10, 2008, as long as Barbara Shapley met their underwriting guidelines based on the information provided

in the “Health Statement.” It is undisputed in this case that the only reason for not issuing the insurance for Barbara Shapley was that Centurion did not complete a “phone interview.” (R. Vol. 1, pg. 128) There is evidence in the record that Barbara Shapley otherwise qualified for the insurance and, had the interview been conducted, it would have been issued. (R Vol.1, pp. 126) The “interview” process is explained to the insured in the “Notice of Insurance Underwriting Practices” furnished with the application documents. (R Vol.1, p. 211.) This document states that prior to issuing the policy

“[T]he underwriter may first need additional information from you regarding your answers on the Health Statement. If so, we (or our representative) will contact you by telephone to obtain the information we need to make our decision. If we require a telephone interview and the interview is not completed for any reason we will not approve the insurance coverage(s) you requested.”

(R Vol.1, p.211.)(Emphasis added.)

This is the only indication of the potential need for further information on the part of the insurer and it is specifically limited to the questions posed in the Health Statement and the answers given. (In this case Mrs. Shapley had answered all of the questions in the negative.)

Importantly, the “Rights and Treatment of Debtors” section of the Idaho Administrative Procedures Act requires that in relation to offering credit life or disability insurance, “No statement made by a debtor shall be used by the insurer as a basis for denying eligibility for coverage unless such a statement is contained in a written application for insurance signed by the debtor.” (IDAPA 18.01.61.11.14) Thus, the Defendants are limited to the written application, including the “Health Statement” to determine eligibility for this insurance. This makes sense because the insurer controls all aspects of the application process – timing, wording, and underwriting. This has been recognized by Idaho Courts. In *Wardle v. International Health & Life Insurance Co.*, 97 Idaho 668, 551 P.2d 623 (1976) the Court observed that “[s]ince it frames

the application questions, the company must keep them free from misleading interpretations and the consequence of its failure to do so is that all ambiguities in the application will be construed against the insurer.” *Wardle*, 97 Idaho 668, 672, 551 P.2d 623, 627; *Citing Purcell v. Washington Fidelity Nat'l Ins. Co.*, 141 Or. 98, 16 P.2d 639 (1932). See also *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 923 P.2d 456 (1996) where a punitive damage award was supported in part by a rescission based on “unusual and strained” interpretation of the term “treatment.”

This also makes sense in the context of life insurance in general. The company is not without a remedy if the insured procures the insurance through misstatements in the application. Idaho Code §41-1811 specifically allows a company to rescind any policy obtained by an insured using an application containing “misrepresentations, omissions, concealment of facts, and incorrect statements” that are “fraudulent” or “material either to the acceptance of the risk, or to the hazard assumed by the insurer” or the insurer in good faith wouldn’t have issued the policy as written if it had known the truth.<sup>2</sup>

In this case however, contrary to the required inception date of the policy and the requirements of the application process, after Mr. Shapley submitted a claim for Barbara’s death, the Defendants ended their illegal underwriting inquiry and simply refused to issue the coverage promised. In considering this issue below, the District Court held that

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<sup>2</sup>41-1811. Representations in applications. - All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, [sic] by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

- (a) Fraudulent; or
- (b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or
- (c) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

“It is this Court’s conclusion that Centurion has not accepted the Shapley’s applications at the time of Barbara Shapley’s death. Centurion may very well have accepted Barbary Shapley’s application after the telephone interview and not been in any violation of IDAPA 18.01.61.11.14. Or, Centurion could have learned of something during the telephone interview that caused it some concern, and it could have required another written application that it denied. However, neither of these scenarios did occur, and Centurion did not violate rules governing credit life insurance because Barbara Shapley died before Centurion could deny or accept the application.”

(R Vol.1, p.283.)

**2.      *The District Court’s Interpretation of the applicable statute and regulation renders them meaningless and without effect***

When interpreting a statute, courts must strive to give force and effect to the legislature’s intent in passing the statute. *Davaz v. Priest River Glass Co., Inc.*, 125 Idaho 333, 336, 870 P.2d 1292, 1295 (1994). “Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction.” *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). However, if the result is absurd, or if the language is ambiguous, the court must engage in statutory construction. *Id.*; *Ada County Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 368, 179 P.3d 323, 331 (2008). When engaging in statutory construction, courts have a “duty to ascertain the legislative intent, and give effect to that intent.” *Id.* “[T]he Court must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the legislature.” *Davaz*, 125 Idaho at 336, 870 P.2d at 1295 (internal citation omitted). “[The Court] also must take account of all other matters such as the reasonableness of the proposed interpretations and the policy behind the statute.” *Id.*

The District Court’s interpretation of I.C. § 41-2307 and the associated IDAPA governing credit insurance renders them totally meaningless and contrary to any possible intent of such



provisions. As interpreted in the Court's decision, the statute allows insureds to be unknowingly uninsured, companies to collect unearned premium, and for underwriting practices that only benefit insurers. As such, the interpretation of this provision leads to totally unjust and absurd results.

**i. This court should consider application of 'conditional receipt' or similar equitable doctrine given the statutory and regulatory restrictions on credit life insurance**

In many life insurance scenarios, the question of whether coverage was extended prior to an applicant's death is answered by application of the "conditional receipt" doctrine. This doctrine is predicated on the idea that an insurer may bind a kind of temporary coverage by acceptance of a premium that is conditioned upon actual acceptance later – after insurability has been determined.

"There are two types of conditional receipts in common usage-the 'approval type' which usually recites that coverage shall be in force from a specified date provided the application is approved as applied for at the home office of the insurance company; and, the 'insurability type' receipt which provides that insurance coverage shall be effective as of a specified date provided the company is satisfied that on such date the applicant was an insurable risk under the company's underwriting rules for the policy applied for."

*Prudential Ins. Co. of Am. v. Lamme*, 83 Nev. 146, 147-48, 425 P.2d 346, 347 (1967). The imposition of coverage prior to actual acceptance of the risk has been fairly characterized as insuring the "uninsurable" for a short period of time but acceptable for public policy reasons. *Lamme*, 83 Nev. 146, 149-50, 425 P.2d 346, 348.

Similarly, credit life policies being sold in Idaho ostensibly have an 'effective date' that often may predate the actual acceptance of the insurance. There is no justification in this context to apply a more liberal rule that would allow companies to shed the burden of indemnifying an otherwise covered loss merely because of the company hasn't decided to "accept" the insured.

C. **Material issues of fact exist whether a contract for credit insurance was formed**

“Formation of a contract is generally a question of fact for the trier of fact to resolve.”

*P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237-38, 159 P.3d 870, 874-75 (2007); *Inland Title Co. v. Comstock*, 116 Idaho 701, 702, 779 P.2d 15, 16 (1989).

“Formation of a valid contract requires that there be a meeting of the minds as evidenced by a manifestation of mutual intent to contract. This manifestation takes the form of an offer and acceptance.” *Id.* Proof of a “meeting of the minds” requires evidence that the parties had a mutual understanding of the terms of their agreement and that they mutually assented to be bound by those terms. *Thomas v. Schmelzer*, 118 Idaho 353, 356, 796 P.2d 1026, 1029 (Ct. App. 1990).

“The determination of whether there was sufficient evidence to show a meeting of the minds to form an express agreement is a question of fact to be resolved by the trier of fact.” *Id.*, citing *Glenn v. Gotzinger*, 106 Idaho 109, 675 P.2d 824 (1984); *Bischoff v. Quong-Watkins Properties*, 113 Idaho 826, 748 P.2d 410 (Ct.App.1987).

“To meet this standard the contract must embody a distinct understanding of the parties, showing a meeting of the minds as to all necessary terms of the contract.” *Dursteler v. Dursteler*, 108 Idaho 230, 234, 697 P.2d 1244, 1248 (Ct. App. 1985), citing *e.g.*, *C.H. Leavell and Co. v. Grafe & Associates, Inc.*, 90 Idaho 502, 414 P.2d 873 (1966). “The obligations of the parties must be identified so that the adequacy of performance can be ascertained.” *Id.*, citing *Dale's Service Co., v. Jones*, 96 Idaho 662, 534 P.2d 1102 (1975). “If terms necessary to a contract are left for future negotiation, the contract cannot be enforced.” *Id.*, citing *Brothers v. Arave*, 67 Idaho 171, 174 P.2d 202 (1946).

In this case there are disputed facts about whether the parties had such a meeting of the

minds regarding the issuance of the credit life insurance to Barbara Shapley. Irrespective of the Defendants' compliance with Idaho law, a jury could conclude, based on the available evidence that all parties understood insurance to cover the home loan would issue as long as Barbara met the applicable underwriting standards. It is undisputed that Bill and Barbara already promised to pay the premium as indicated in the "Insurance Disclosure and Application" and "Health Statement" and consistent with the Defendants' demands. (R Vol.1, pp 110-112.) The amount of insurance was established. (*Id.*) All material exclusions and limitations to payment of benefits had also been established between the parties. (*Id.* at 111.) Coupled with the admission under oath by the I.R.C.P. 30(b)(6) representative that the only basis for the denial was the lack of the phone interview, a reasonable jury could conclude that an agreement had been reached notwithstanding the failure of the Defendants to conduct the interview.

The District Court below completely ignored the fact that Barbara Shapley met the underwriting guidelines for the insurance at issue and there were no material impediments to the enforcement of the contract. The lower court instead focused on the insurer's completely arbitrary and immaterial hurdle of obtaining a phone interview as some kind of condition precedent. A phone interview, remember, that was itself limited to the answers on a preprinted form already provided by the insured. A rational jury could conclude, based on all of the evidence, that the phone interview requirement itself a condition subsequent that could have still been effectively satisfied by requesting Barbara Shapley's medical records to confirm her answers to the "Health Statement." The statement itself authorized the Defendants to do so. (R. Vol.1, pg. 112.)

1. ***This Court should consider the doctrine of "temporary insurance" and the policy behind the decision in *Toeys v. W. Farm Bureau Life Ins. Co.* as instructive in this case***

The dispute in *Toeys v. W. Farm Bureau Life Ins. Co.*, 94 Idaho 151, 154, 483 P.2d 682, 685 (1971) centered on a term life policy - which did not involve the unique scenario of a credit policy issued by a company owned by the creditor. *Id.* at 152. In that case, the premiums were paid separately and were not part of any credit transaction. *Id.* However, the case is still insightful to understand that the company bears the risk of a loss occurring during its underwriting delay when an insured reasonably believes coverage exists following the application process.

Judge Learned Hand in the case of [*Gaunt v. John Hancock Mutual Life Insurance Co.*, 160 F.2d 599 (2nd Cir. 1947)] held that a provision to the effect that the insurance shall be in effect from the date of the application if the premium is paid in advance gives rise to a contract of insurance immediately upon receipt of the application and payment of the premium and that the proviso that the company shall be satisfied that the insured was acceptable at the date of the application creates only a right to terminate the contract if the company becomes dissatisfied with the risk before a policy is issued. In that case Judge Hand stressed the fact that an application must be construed as it would be taken by the ordinary applicant and that such a person would assume that he was getting immediate insurance for his money and would not assume that he was left uncovered before the insurer approved the risk.

*Toeys v. W. Farm Bureau Life Ins. Co.*, 94 Idaho 151, 154, 483 P.2d 682, 685 (1971).

The rationale behind *Toeys* and similar holdings is that it is the insured that bears all the risk when an insurance company can delay underwriting or accepting the application on its whim. The only “downside” of this process inures to the insured.

In view of this finding, the unequal bargaining power of the two parties, the complex legalistic and ambiguous phrasing used throughout the contract, and the use by the insurance company of the procedure or device known as ‘conditional premium receipt,’ this Court holds that a contract of insurance was in existence on the date that the insured died. By this holding the Supreme Court of Idaho is subscribing to the theory known as ‘temporary contract of insurance.’ The conditional premium receipt created a temporary contract of insurance subject to a condition, i. e., rejection of *Toeys*' application by the insurance company. Since rejection did not occur prior to *Toeys*' death, the company is liable.

*Toeys*, 94 Idaho 151, 155, 483 P.2d 682, 686.

Here, it is undisputed that the proposed effective date for the Shapleys' credit life insurance was July 10, 2008. (R. Vol.1, pg 110.) This was in accordance with the statute requiring the policy to begin on the date the indebtedness begins. A jury could find that Mr. and Mrs. Shapley reasonably believed that their debt was protected from an untimely death on the date they closed on the loan as long as they met underwriting requirements. Indeed, Steve Ellison, agent and employee of the Defendants, told Mr. Shapley that the insurance was effective on the date the loan was signed. (R. Vol.1, pg. 172). The Shapleys were never advised that they were uninsured after closing on their loan. The Defendants provided paperwork that stated the company may need a telephone interview, but the necessity of the interview was never communicated to the insureds until *after* the claim was submitted.

The underlying policy considerations of *Toevs* and I.C. § 41-113 in dealings between an insurer and insureds. As the lower court has interpreted § 41-2307, the statute would allow all credit life insurance applicants to be uninsured while in the repayment period of their loan. Such a result flies in the face of the intent of the regulations on credit life insurance and leads to absurd results. The purpose of this type of insurance is to protect the debt during the repayment period. The Plaintiff is not arguing that the company has to take all comers who may apply. However, if the company delays its underwriting until after the repayment period begins, it must bear the risk of a loss occurring during the period before the risk is accepted or rejected.

Because the intent of the special credit insurance statutes are to require the term of the credit policy to begin at the closing of the loan summary judgment was inappropriate. Further, the Shapleys reasonably believed, as did Mr. Ellison, that coverage began on the closing date. As such, the Plaintiff asks the Court to reconsider its decision and deny summary judgment.

**2.      *The District Court's Decision impermissibly allows Defendants to collect***

***unearned premiums.***

The District Court's decision also allows the impermissible result of allowing insurers to repeatedly collect premiums for a period during which the companies are exposed to no risk. This is a prohibited practice in this state. Idaho Code § 41-1323 provides "(1) No person shall wilfully collect any sum as premium or charge for insurance, which insurance is not then provided ...." Irrespective of the statutes at issue, it is unconscionable for a company to indicate that coverage will begin on a certain day but then delay its underwriting and then either avoid the risk of a loss if one occurs, or otherwise collect premium during the self-imposed delay.

[A]n insurance company might delay or backdate coverage as it sees fit—avoiding liability if a loss occurs soon after the application, or retaining the premium for a risk-free period if no such loss occurs. ***This practice has been vigorously condemned.***

*Permann v. Nationwide Ins. Co.*, 108 Idaho 192, 195, 697 P.2d 1206, 1209 (Ct. App. 1985) (Burnett, J., dissenting)(citing *Toevs v. Western Farm Bureau Life Insurance Co.*, 94 Idaho 151, 483 P.2d 682 (1971)(emphasis added).

The Court's interpretation of the code allows Centurion to do just what Justice Burnett said companies shouldn't do. It is undisputed in this case that had Barbara Shapley not passed away and Centurion satisfied its phone interview requirement, a policy would have been issued and paid for with an effective date of July 10, 2008. However, as the Court interpreted § 41-2307, Centurion had no risk and only reward until it completed the phone interview. Had no loss occurred, Centurion would have collect unearned premium for the period in which it had no risk – the application date until the company completed underwriting. This is an absurd and unjust result which a trier of fact should have been allowed to consider as a basis for finding that a contract of insurance indeed existed in this case.

## **II. THE DISTRICT COURT ERRED BY REFUSING TO ALLOW PLAINTIFF TO AMEND HIS COMPLAINT TO INCLUDE THE EQUITABLE THEORY OF ESTOPPEL.**

Concurrent with his request for Reconsideration, Plaintiff also asked the lower court to allow him to amend his Complaint to include the equitable theory of estoppel to prevent Defendants from claiming that no contract had been formed. (R. Vol. 2, pg. 285-301)

### ***A. Estoppel is an appropriate remedy in this case as the Defendants should not be permitted to benefit from their change of position relative to Barbara Shapley's eligibility for insurance.***

The doctrine of equitable estoppel in an insurance case requires an insured's reliance on a statement made by the defendant and the insurer must benefit from its change in position. *Shoup v. Union Sec. Life Ins. Co.*, 142 Idaho 152, 155 (2005). Bill Shapley should have been allowed to advance his theory of estoppel on the facts of this case. There is no credible factual dispute in the record before the court that Barbara Shapley would have qualified for insurance in this case. Likewise, there is no dispute that under the Defendants' scheme of only ratifying insurance coverage if a loss has not occurred between the time of the application and whenever the company decides to accept the insured is clearly a benefit to the company. They not only avoid having to cancel the insured debt, they gain the interest owed over time by continued payments.

### **1. Whether Plaintiff reasonably believed that a policy would be effective on the closing date is a question of fact for a jury.**

The question of whether the insured's reliance was reasonable in an estoppel scenario is a question of fact for the jury. *Young v. State Farm Mut. Auto Ins. Co.*, 127 Idaho 122, 126 (1995). It was inappropriate for the District Court to essentially decide that fact by denying the requested amendment. It is undisputed that the proposed effective date of the policy for both Barbara and Bill Shapley was July 10, 2008. No other underwriting requirement was discussed with the

Shapleys at that time. The need for a telephonic interview was mentioned in the paperwork, but it was mentioned as a possibility, not a requirement. It is also undisputed that the Defendants did nothing until *after* the claim was submitted to implement the phone call procedure. In addition, there are substantial facts that support the conclusion that nothing would be gained by demanding a phone call other than escaping liability for paying benefits associated with Barbara's death. Based on these facts, alone, a jury could find that the Plaintiff's reliance was reasonable.

To further bolster the Plaintiff's reliance, the Plaintiff has offered testimony that Steve Ellison told him that the policy was effective when they closed on the loan. Mr. Ellison is a licensed agent for Centurion and a Wells Fargo employee. Clearly, he knows the guidelines and procedures the Defendants use in issuing these policies. Following Barbara Shapley's death, Mr. Shapley spoke with Mr. Ellison. Mr. Ellison said the policy was effective when the loan closed and he instructed Mr. Shapley to submit the claim for benefits. *See* Affidavit of William Shapley.

If the Defendants' agent believed that the policy was effective on July 10, 2008, then it is also reasonable that the Plaintiff relied on that same fact. Therefore, Mr. Ellison's statement regarding the effective date of the policy reinforces the Plaintiff's reliance that the policy was effective when he and his wife became indebted.

## **2. Quasi-estoppel applies in this case**

Unlike equitable estoppel, quasi estoppel does not require a misrepresentation by one party or actual reliance by the other. *Keese v. Fetzek*, 111 Idaho 360, 362, 723 P.2d 904, 906 (Ct.App.1986).

To constitute quasi estoppel, the person against whom the estoppel is sought must have gained some advantage for himself, produced some disadvantage to the person seeking the estoppel, or induced such party to change his position. In addition it must be unconscionable to allow the person against whom the estoppel is sought to maintain a position which is inconsistent with the one in which he



accepted a benefit.

*Medical Serv. Group, Inc. v. Boise Lodge No. 310*, 126 Idaho 90, 96, 878 P.2d 789, 795 (Ct. App. 1994); *Tommerup v. Albertson's, Inc.*, 101 Idaho 1, 5, 607 P.2d 1055, 1059 (1980), *citing Bjornstad v. Perry*, 92 Idaho 402, 443 P.2d 999 (1968).

“Quasi estoppel is a broadly remedial doctrine, often applied ad hoc to specific fact patterns.” *Keese v. Fetzek*, 111 Idaho 360, 362, 723 P.2d 904, 906 (Ct. App. 1986); *See also, Med. Services Group, Inc.*, 126 Idaho 90, 96, 878 P.2d 789, 795. It “precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by him.” *Keese*, 111 Idaho 360, 362, 723 P.2d 904, 906; *citing KTVB, Inc. v. Boise City*, 94 Idaho 279, 281, 486 P.2d 992, 994 (1971). The doctrine is designed to prevent a party from reaping an unconscionable advantage, or from imposing an unconscionable disadvantage upon another, by changing positions. *Id.*; *e.g., Dawson v. Mead*, 98 Idaho 1, 557 P.2d 595 (1976); *Lupis v. Peoples Mortgage Co.*, 107 Idaho 489, 690 P.2d 944 (Ct.App. 1984). Quasi estoppel, unlike equitable estoppel, does not require misrepresentation by one party or actual reliance by the other. *Evans v. Idaho State Tax Commission*, 97 Idaho 148, 540 P.2d 810 (1975).

Based on the facts in the record, the District Court below should have allowed Plaintiff to assert his claim for equitable relief.

### **III. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON PLAINTIFFS THEORY OF NEGLIGENCE ON THE BASIS THAT NO CONTRACT EXISTED.**

The Court granted summary judgment on all claims because “all of Shapley’s claims are predicated upon the existence of this purported contract.” (R. Vol. 2, pg. 269) Defendants in this case had the burden of presenting evidence on each of the Plaintiff’s claims to rule out any material issues of fact. “The party moving for summary judgment bears the burden of proving the

absence of a genuine issue of material fact.” *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 175, 923 P.2d 416 (1996). Whether a fact is “material” depends on whether it is “one upon which the outcome of the case may be different.” *Petersen v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266 (1998). “Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented.” *McCoy v. Lyons*, 120 Idaho 765, 771, 820 P.2d 360 (1991). Motions for summary judgment are to be decided upon facts shown, not upon facts that might have been shown. *Aardema v. U.S. Dairy Sys., Inc.*, 147 Idaho 785, 793, 215 P.3d 505, 513 (2009) (citing *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct.App.1984).

An insured can recover damages for negligence on the part of the party procuring the policy for errors in the issuance of the policy. *See McAlvain v. Gen. Ins. Co. of Am.*, 97 Idaho 777, 554 P.2d 955 (1976). Issues of negligence present questions of fact to be resolved by the jury. *Deshazer v. Tompkins*, 89 Idaho 347, 355, 404 P.2d 604, 608 (1965).

Plaintiff adequately alleged that the Defendants were negligent in procuring or issuing the policy and delaying its issuance. That is separate and apart from the existence of the policy as the basis for the claim. Shapley’s Complaint read in part:

33. The Defendants had a duty to procure and issue insurance and pay benefits to Mr. Shapley for the policy that was in effect at the time of Barbara Shapley’s death.

34. Defendants negligently, grossly negligently and/or intentionally breached this duty by failing in their duty to properly and timely complete the underwriting of the Plaintiff’s policy according to the standards of the insurance industry and the laws of the State of Idaho.

(R. Vol.1, pg. 17).

Furthermore, the agent for Wells Fargo Financial and Centurion, Steve Ellison, testified

that credit life insurance was discussed on the Shapleys' first visit to the branch.

Q. Do you remember the first time you met Bill Shapley or his wife?

A. Yes.

Q. Tell me about it.

A. They came into Wells Fargo Financial, spoke with Kyle first requesting a Loan, and Kyle directed them to me. He gave introductions. And the first question Bill asked was along the lines of, is there insurance on your loans? Or, can I get insurance?

Q. That was the first question he asked you?

A. Correct.

Q. And what did you tell him?

A. I said we have those options.

Q. Do you remember giving him options?

A. Yes.

(R. Vol. 1, pg. 60-61) Despite this discussion of insurance on the first visit to the branch, Mr. Ellison did not have the Shapleys submit applications until the date of closing. It is undisputed that Mr. Ellison is a licensed agent to sell insurance on behalf of Centurion and was trained by the Defendants with respect to this type of insurance. There is no dispute that at all relevant times he was the Defendants' agent and employee. In light of the Defendants' underwriting procedures and the institutionally-created gap in coverage by requiring a phone interview in some cases, a jury could find that it was negligent for the Defendants to advise the Shapleys to submit their applications on the date they became obligated on the loan and not before. A reasonable jury could also find that the Defendants were negligent in the unreasonable delay in issuing coverage.

These claims are totally independent of the existence of the insurance policy. Defendants presented no evidence to rule out the existence of a genuine issue of material fact on this issue. In fact, it presented no evidence with regard to the negligence claim. This is their burden to meet on summary judgment and they failed to do so. As a result, summary judgment on this claim was inappropriate and the Plaintiff requests reconsideration of the Court's decision.

**IV. BASED ON THE ERROR BELOW, THIS COURT SHOULD REVERSE THE**

## GRANT OF SUMMARY JUDGMENT

Plaintiff asserts that a valid contract of insurance either existed at the time of Barbara Shapley's death or that the Defendants were negligent in failing to time the application process and associated underwriting to allow concurrent coverage with the loan. In addition, a jury should be allowed to consider Plaintiff's theory of estoppel as a basis for imposing contract liability on Defendants. Based on the forgoing arguments, the District Court's Order Granting Summary Judgment should be vacated in its entirety and the District Court's Order Denying Plaintiff's Motion to Amend to Conform to the Proof and to Include a Count for Equitable Estoppel should be reversed.

DATED this 10<sup>th</sup> day of September, 2012.

PEDERSEN and WHITEHEAD

By

Jarom A. Whitehead, ISB #6656  
Attorney for Appellant

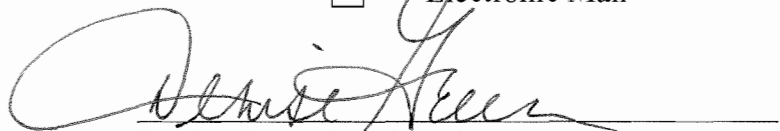
## CERTIFICATE OF SERVICE

DENISE GREEN, a legal assistant with the firm Pedersen and Whitehead, hereby certifies that on the 16<sup>th</sup> day of September, 2012, she caused a true and correct copy of the within and foregoing APPELLANT'S BRIEF to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

Kenneth C. Howell  
HAWLEY TROXELL ENNIS & HAWLEY, LLP  
P. O. Box 1617  
Boise, ID 83701-1617

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

First Class Mail  
Hand Delivered  
Facsimile  
Electronic Mail

  
Denise Green, Legal Assistant

# APPENDIX

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**IDAPA 18  
TITLE 01  
CHAPTER 61**

**18.01.61 - CREDIT LIFE AND CREDIT DISABILITY INSURANCE**

**000. LEGAL AUTHORITY.**

This rule chapter is promulgated pursuant to the rule making authority in Sections 41-211 and 41-2314, Idaho Code, to aid in the interpretation and implementation of Chapter 23, Title 41, Idaho Code, concerning credit life and credit disability insurance. Nothing in this rule chapter shall apply to insurance for which no identifiable charge is made to the debtor. (7-1-93)

**001. TITLE AND SCOPE.**

The purpose of this rule chapter is to protect the interests of debtors and the public in this state by providing a system of rate, policy form, and operating standards for the transaction of credit life and credit disability insurance. (7-1-93)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (5-8-09)

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Subchapter A - General Provisions, Sections 000 through 099., (5-8-09)

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. (5-8-09)

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (5-8-09)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (5-8-09)

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (5-8-09)

**04. Web Site Address.** The department's website is <http://www.doi.idaho.gov>. (5-8-09)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. (5-8-09)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Closed-End Credit.** "Closed-end credit" means a credit transaction that is not open-end credit. (7-1-93)

**02. Compensation.** "Compensation" means money or anything else of value. (7-1-93)

**03. Credit Disability Insurance.** "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as

defined in the policy. (7-1-93)

**04. Credit Insurance.** "Credit insurance" means both credit life insurance and credit disability insurance. (7-1-93)

**05. Credit Life Insurance.** "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction. (7-1-93)

**06. Credit Transaction.** "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services or properties sold or leased, is to be made at a future date or dates. (7-1-93)

**07. Creditor.** "Creditor" means the lender of money or vendor of goods, services or property, rights or privileges, including a lessor under a lease intended as security for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender or vendor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them. (7-1-93)

**08. Debtor.** "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction. (7-1-93)

**09. Identifiable Charge.** "Identifiable charge" is the amount the debtor is charged for insurance which is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, and including any differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. (7-1-93)

**10. Indebtedness.** "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction. (7-1-93)

**11. Net Written Premium.** "Net written premium" means gross written premium minus refunds on terminations. (7-1-93)

**12. Open-End Credit.** "Open-end credit" means an arrangement as defined in Section 28-41-301(25), Idaho Code, including revolving charge accounts, pursuant to which: (7-1-93)

**a.** A creditor may permit a debtor, from time to time, to purchase on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card; (7-1-93)

**b.** The amounts financed and the finance and other appropriate charges are debited to an account; (7-1-93)

**c.** The finance charge, if made, is computed on the account periodically; and (7-1-93)

**d.** Either the debtor has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to purchase on credit. (7-1-93)

**13. Preexisting Condition.** "Preexisting condition" means a health condition, including sickness or injury, for which there has been medical advice, diagnosis or treatment within six (6) months preceding the effective date of the debtor's coverage and which exists prior to the effective date of the coverage. (7-1-93)

#### **011. RIGHTS AND TREATMENT OF DEBTORS.**

**01. Multiple Plans of Insurance.** If a creditor makes available to the debtors more than one plan of credit life insurance or more than one plan of credit disability insurance, all debtors must be informed of all such plans for which they are eligible. (7-1-93)



**02. Substitution.** When a creditor requires credit life insurance, credit disability insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or by procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed. (7-1-93)

**03. Evidence of Coverage.** (7-1-93)

**a.** All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance. The individual policy or certificate of insurance shall be delivered to the debtor in accordance with Section 41-2311, Idaho Code. (7-1-93)

**b.** Each individual policy or certificate of insurance shall set forth such information as required by Section 41-2308, Idaho Code, and any other appropriate sections of the Idaho Insurance Code. (7-1-93)

**04. Claims Processing.** All credit insurance claims shall be processed in accordance with Sections 41-1329 and 41-2312, Idaho Code. (7-1-93)

**05. Termination of Group Credit Insurance Policy.** (7-1-93)

**a.** If a debtor is covered by a group credit insurance policy providing for the payment of single premiums to the insurer, then provision shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under such policy shall be continued for the entire period for which the single premium has been paid. (7-1-93)

**b.** If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy for whatever reason, termination notice thereof shall be given to the insured debtor at least thirty (30) days prior to the effective date of termination except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor. (7-1-93)

**06. Interest on Premiums.** If any direct or indirect finance, carrying, credit or service charge is made to the debtor on such insurance charges or premiums, the creditor must remit and the insurer shall collect such premium within sixty (60) days after it is added to the indebtedness. (7-1-93)

**07. Renewal or Refinancing of the Indebtedness.** If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of such termination prior to scheduled maturity, a refund shall be paid or credited to the debtor as provided in Section 017. In any renewal or refinancing of the indebtedness, the effective date of the coverage as respects any policy provision shall be deemed to be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least to the extent of the amount and term of the indebtedness outstanding at the time of renewal and refinancing of the debt. In addition, the policy shall provide that, in the event the debtor becomes disabled while insured, credit disability insurance benefits will be payable during continued disability regardless of any termination of the insurance by renewal or refinancing, unless a different provision not less favorable to the debtor is approved by the director. (7-1-93)

**08. Maximum Aggregate Provisions.** A provision in a policy or certificate that sets a maximum limit on total payments must apply only to that policy or certificate except as may be provided for in Section 41-2005(4), Idaho Code. (7-1-93)

**09. Voluntary Prepayment of Indebtedness.** If a debtor prepays the indebtedness other than as a result of death or through a lump sum disability payment: (7-1-93)

**a.** Any credit life insurance covering such indebtedness shall be terminated and an appropriate refund

of the credit life insurance premium shall be paid to the debtor in accordance with Section 017; and (7-1-93)

**b.** Any credit disability insurance covering such indebtedness shall be terminated and an appropriate refund of the credit disability insurance premium shall be paid to the debtor in accordance with Section 017. If a claim under such coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit disability benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period. (7-1-93)

**10. Involuntary Prepayment of Indebtedness.** If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor, if living, or the beneficiary, other than the creditor, named by the debtor or to the debtor's estate: (7-1-93)

**a.** In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit disability insurance premium in accordance with Section 017; (7-1-93)

**b.** In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with Section 017; (7-1-93)

**c.** In either case, the amount of the benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges. (7-1-93)

**11. Amounts to be Insured:** (7-1-93)

**a.** Credit life insurance benefits shall be consistent with the premium charge. Credit life insurance may provide benefits in amounts which do not exceed, but may be less than, the initial amount of indebtedness, including unearned interest or finance charges, or the actual amount of unpaid indebtedness, whichever is greater. (7-1-93)

**b.** Credit disability insurance may provide benefits not exceeding an amount according to Section 41-2306(2), Idaho Code. (7-1-93)

**c.** If benefits to be provided are less than the scheduled amount of indebtedness, the insurer shall notify the insured of such benefit in the policy or certificate. (7-1-93)

**12. Total Disability.** The policy shall not restrict coverage to those periods of total disability when the debtor is under the regular and continuing care of a physician, osteopath or chiropractor; provided, the insurer may retain the right to require medical evidence of actual total disability at reasonable intervals to justify the commencement and continued payment of benefits. (7-1-93)

**13. Permanent Disabilities.** Credit disability insurance shall not restrict coverage to permanent disabilities, where the debtor is in fact totally disabled for the period required by the policy, although such disability may be of a temporary nature. (7-1-93)

**14. Statement by Debtor.** No statement made by a debtor shall be used by the insurer as a basis for denying eligibility for coverage unless such statement is contained in a written application for insurance signed by the debtor. (7-1-93)

**15. Acceptable Insurance Constituting Waiver.** Acceptance of insurance by the insurer shall constitute a waiver of any conditions for issuance of insurance that the debtor's application revealed as breached on the date the application was made, unless a refund of all insurance charges to the debtor is actually made within thirty (30) days of the date the coverage became effective. (7-1-93)

**012. POLICY FORMS AND RELATED MATERIAL.**

**01. Permissible Forms.** Credit life and credit disability insurance shall be issued only in the forms described in Section 41-2305, Idaho Code. (7-1-93)

**02. Filing Requirements.** All policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders to be delivered or issued for delivery in this state and the schedules of maximum premium rates pertaining thereto shall be filed with the director as required by Section 41-2309, Idaho Code, and other applicable Department of Insurance Bulletins and Rules. (7-1-93)

**013. DETERMINATION OF REASONABLENESS OF BENEFITS IN RELATION TO PREMIUM CHARGE.**

**01. General Standard.** Benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or is expected to develop a loss ratio of not less than fifty percent (50%). The Department of Insurance has established prima facie rates as a means to achieve the loss ratio benchmark. With the exception of deviations approved under Section 019, prima facie rates filed in accordance with Section 014 as adjusted pursuant to Section 018, shall be conclusively presumed to satisfy this general standard. Reporting forms throughout the period of coverage. (7-1-93)

**02. Nonstandard Coverage.** If any insurer files for approval of any form, providing coverage more restrictive than that described in Section 014, the insurer shall demonstrate to the satisfaction of the director that the premium rates to be charged for such restricted coverage will develop or may reasonably be expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these sections. (7-1-93)

**014. PRIMA FACIE RATES.**

**01. Credit Life Insurance Prima Facie Rates.** (7-1-93)

**a. Premium Rate.** Premium rates for credit life insurance on a single life for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in Subsections 014.01.a.i. and 014.01.a.ii. Subsection 014.01.a.iii. refers to single life premium rates for other types of benefits either alone or in combination with the type of benefits applicable to Subsections 014.01.a.i. and 014.01.a.ii. (7-1-93)

**i. Eighty-six cents (\$0.86) per month per one thousand dollars (\$1,000) of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis.** (7-1-93)

**ii. Gross coverage - Decreasing term: fifty-four cents per one hundred dollars of initial insured indebtedness per year (\$0.54/\$100/year) if premiums are payable on a single premium basis and the amount of the insurance decreases in equal monthly amounts.** (7-1-93)

**iii. Level term: One Dollar per one hundred dollars of initial insured indebtedness per year (\$1/\$100/year) if premiums are payable on a single premium basis for an amount of insurance that remains constant throughout the period of coverage.** (7-1-93)

**iv. Joint coverage on either of the basis in Subsection 014.01.a.i., 014.01.a.ii., or 014.01.a.iii. shall be one hundred sixty five percent (165%) of the specified rate for that type of coverage.** (7-1-93)

**v. A combination of the appropriate rate for level term and the appropriate rate for decreasing term (with equal decrements), if coverage provided is a combination of level term and decreasing term (with equal decrements).** (7-1-93)

**vi. If the benefits provided are other than those described in the introduction to this subsection, premium rates for such benefits shall be actuarially consistent with the rates provided in Subsections 014.01.a.i., 014.01.a.ii., 014.01.a.iii., and 014.01.a.iv.** (7-1-93)

vii. If the policy provisions are other than those that correspond to the use of rates provided for in this Rule chapter, those other provisions shall not be unfair, unjust, inequitable, misleading, or deceptive; encourage misrepresentation of the coverage; or be contrary to statute or administrative rule. (7-1-93)

**02. Credit Disability Insurance Prima Facie Rates.** (7-1-93)

a. **Premium Rate.** Credit disability insurance premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment payable, shall be as set forth in Subsection 014.02.a.ii and iii. Subsection 014.02.a.014.02.iii., 014.02.iv., and 014.02.v. refer to premium rates for other types of benefits either alone or in combination with the type of benefits applicable to Subsection 014.02.a.i. and 014.02.a.ii. (7-1-93)

i. If premiums are payable on a single-premium basis for the duration of the coverage, the premium rates for one hundred dollars (\$100.00) of initial indebtedness repayable shall be as set forth in the following table utilizing straight line interpolation for the intervening months; or

No. Months Indebtedness Is Repayable	Non-Retroactive Benefits		Retroactive Benefits		
			7 Day	14 Day	30 Day
	14 Day - 30 Day				
6	\$1.00	\$ .40	\$2.60	\$1.80	\$1.30
2	1.40	.80	3.00	2.20	1.70
24	2.20	1.60	4.00	3.00	2.50
36	3.00	2.40	5.00	3.80	3.30
48	3.50	2.90	5.70	4.30	3.80
60	3.90	3.30	6.30	4.70	4.20
72	4.30	3.70	NA	5.10	4.60
84	4.70	4.10	NA	5.50	5.00
96	5.10	4.50	NA	5.90	5.40
108	5.50	4.90	NA	6.30	5.80
120	5.90	5.30	NA	6.70	6.20

NA - Not Available

(7-1-93)

ii. If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula or according to a formula approved by the director which produces rates actuarially consistent to the single premium rates:

$$Op(n) = \frac{20Sp(n)}{n+1}$$

Where Sp = Single Premium Rate per one hundred dollars (\$100) of initial insured indebtedness repayable in n equal monthly installments.

Op - Monthly Outstanding Balance Premium Rate per one thousand dollars (\$1,000).

n - Original repayment period, in months. (7-1-93)

iii. The actuarial equivalent of Subsections 014.02.a.i. and 014.02.a.ii. shall be used if the coverage provided is a constant maximum indemnity for a given period of time. (7-1-93)

iv. An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in even amounts per month, if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in even amounts per month. (7-1-93)

v. If the benefits provided are other than those described in Subsection 014.02.a.i. above, rates for such benefits shall be actuarially consistent with rates provided in Subsections 014.02.a.i., 014.02.a.ii., 014.02.a.iii., and 014.02.a.iv. (7-1-93)

vi. The outstanding balance rate for credit disability insurance may be either a term-specified rate or may be a single composite term outstanding balance rate applicable to all loans. (7-1-93)

vii. If the policy provisions are other than those that correspond to the use of rate provided for in this Rule chapter, those other provisions shall not be unfair, just, inequitable, misleading, or deceptive; encourage misrepresentations of the coverage; or be contrary to statute or administrative rule. (7-1-93)

**015. CREDIT LIFE INSURANCE.**

Premium rates in conformance with Section 014 shall apply to policies providing credit life insurance to be issued with or without evidence of insurability, to be offered to all debtors, and containing: (7-1-93)

**01. Exclusions.** No exclusions other than suicide within six (6) months of the incurred indebtedness; and (7-1-93)

**02. Age Restrictions.** Either no age restrictions or age restrictions making ineligible for coverage debtors sixty-five (65) or over at the time the indebtedness is incurred or debtors having attained age seventy (70) or over on the maturity date of the indebtedness. (7-1-93)

**03. Open-End Credit Plan.** Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance, classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age sixty-five (65). (7-1-93)

**04. Closed-End Credit Plans.** On insurance written in connection with closed-end credit plans and open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical advice, diagnosis or treatment within six (6) months preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six (6) months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a different advance or charge to the plan account is the date on which the advance or charge is posted to the plan account. Other more restrictive provisions may be used subject to appropriate rate adjustment approved by the director. (7-1-93)

**05. Other Provisions.** If the policy provisions are other than those that correspond to the use of rates provided for in Section 014, those other provisions shall not be unfair, unjust, inequitable, misleading, or deceptive; encourage misrepresentation of the coverage; or be contrary to statute or administrative rule. (7-1-93)

**016. CREDIT DISABILITY INSURANCE.**

Premium rates in conformance with Section 014 shall apply to policies providing credit disability insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing: (7-1-93)

**01. Preexisting Conditions.** No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis or treatment within six (6) months preceding the effective date of the debtor's coverage and which caused loss within the six (6) months following the effective date of coverage. (7-1-93)

**02. Other Exclusions or Restrictions.** No other provision which excludes or restricts liability in the event of disability caused in a specific manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries or disability arising out of the commission of felony acts. (7-1-93)

**03. Actively-at-Work Requirement.** No actively-at-work requirement more restrictive than one (1) requiring that the debtor be actively at work at a full-time gainful occupation on the effective date of coverage. "Full time" means a regular work week of not less than thirty (30) hours. A debtor shall be deemed to be actively at work if absent from work due solely to regular day off, holiday or paid vacation. (7-1-93)

**04. Age Restrictions.** No age restrictions, or only age restrictions making ineligible for coverage debtors sixty-five (65) or over at the time the indebtedness is incurred or debtors who will have attained age sixty-six (66) or over on the maturity date of the indebtedness. (7-1-93)

**05. Daily Benefit.** A daily benefit equal in amount to one thirtieth (1/30) of the monthly benefit payable under the policy for the indebtedness. (7-1-93)

**06. Definition of Disability.** A definition of "disability" which provides that during the first twelve (12) months of disability the insured shall be unable to perform the substantial and material duties of his occupation at the time the disability occurred, and thereafter the duties of any occupation for which the insured is reasonably fitted by education, training or experience. This Subsection 016.06 shall not apply to lump sum disability coverage. (7-1-93)

**07. Open-End Credit Plan.** Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age sixty-five (65). (7-1-93)

**08. Other Provisions.** If the policy provisions are other than those that correspond to the use of rates provided for in Section 014, those other provisions shall not be unfair, unjust, inequitable, misleading, or deceptive; encourage misrepresentation of the coverage; or be contrary to statute or administrative rule. (7-1-93)

**09. Effective Date of Coverage.** For the purposes of Subsections 016.01 and 016.03, the effective date of coverage for each part of the insurance attributable to a different advance or charge to an open-end credit plan account is the date on which the advance or charge is posted to the plan account. (7-1-93)

**017. REFUND FORMULAS.**

**01. Filing and Approval by the Director.** Any refund formula which is at least as favorable to the insured debtor as the "sum of the digits" formula, or the "Rule of 78," for single premium decreasing or disability plans or pro-rata for other plans, shall be deemed acceptable. Refund formulas must be filed with and approved by the director prior to use in accordance with Section 41-2310 (2), Idaho Code. (7-1-93)

**02. Termination.** In the event of termination, no charge for credit insurance may be made for the first fifteen (15) days of a loan month and a full month may be charged for sixteen (16) days or more of a loan month. (7-1-93)

**03. Minimum Refund.** No refund of five dollar (\$5) or less need be made. (7-1-93)

**018. EXPERIENCE REPORTS AND ADJUSTMENT OF PRIMA FACIE RATES.**

**01. Report of Credit Life and Credit Disability Business Written.** Each insurer doing credit insurance business in this state shall annually file with the director and the NAIC Support and Services Office a report of credit life and credit disability business written on a calendar year basis. Such report shall utilize the Credit Insurance Supplement-Annual Statement Blank as approved by the National Association of Insurance Commissioners. Such filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement. (7-1-93)

**02. Review of Loss Ratio Standards.** Set Forth in Section 014. In 1995, and on a triennial basis thereafter, the director will review the loss ratio standards set forth in Section 013 and the prima facie rates set forth in Section 014 and determine therefrom the rate of expected claims on a statewide basis, compare such rate of expected claims with the rate of actual claims for the preceding three years determined from the incurred claims and earned premiums at prima facie rates reported in the Annual Statement Supplement, and may, if deemed necessary, revise the actual statewide prima facie rates by amendment of this Rule chapter to be used by insurers during the next three years. Such rates will reflect the difference between (a) actual claims based on experience; and (b) expected claims based on the loss ratio standards set forth in Section 013 applied to the prima facie rates set forth in Section 014. (7-1-93)

**019. USE OF RATES - DIRECT BUSINESS ONLY.**

**01. Use of Prima Facie Rates.** An insurer that files rates or has rates on file that are not in excess of the prima facie rates shown in Section 014, to the extent adjusted pursuant to Section 018, may use those rates without further proof of their reasonableness. (7-1-93)

**02. Use of Rates Higher Than Prima Facie Rates.** An insurer may file for approval of and use rates that are higher than the prima facie rates established pursuant to Section 018, to the extent adjusted, if it can be expected that the use of such higher rates will result in a ratio of claims incurred to premiums earned (assuming the use of such higher rates) that is not less than fifty percent (50%) for those accounts to which such higher rates apply and that such upward deviations will not result on a statewide basis for that insurer of a ratio of claims incurred to premiums earned of less than the expected loss ratio underlying the current prima facie rate developed or adjusted pursuant to Section 018. If rates higher than the prima facie rates shown in Section 014, to the extent adjusted pursuant to Section 018, are filed for approval, the filing shall specify the accounts to which such rates apply. Such rates may be: (7-1-93)

- a. Applied uniformly to all accounts of the insurer; or (7-1-93)
- b. Applied on an equitable basis approved by the director to only one (1) or more accounts of the insurer for which the experience has been less favorable than expected; or (7-1-93)
- c. Applied according to a case-rating procedure on file with the director. (7-1-93)

**03. Approval Period of Deviated Rates.** (7-1-93)

- a. A deviated rate will be in effect for a period of time not longer than the experience period used to establish such rate (i.e. one (1) year, two (2) years or three (3) years). An insurer may file for a new rate before the end of a rate period, but not more often than once during any twelve-month (12) period. (7-1-93)
- b. Notwithstanding the provision of Subsection 019.01 of this rule chapter, if an account changes insurers, that rate approved to be used for the account by the prior insurer is the maximum rate that may be used by the succeeding insurer for the remainder of the rate approval period approved for the prior insurer or until a new rate is approved for use on such account, if sooner. (7-1-93)

**04. Use of Rates Lower Than Filed Rates.** An insurer may at any time use a rate for an account that is lower than its filed rate without prior notice, justification and approval by the director. (7-1-93)

**05. Glossary of Terms and Definitions as Used in Section 019.** (7-1-93)

- a. "Experience" means "earned premiums" and "incurred claims" during the experience period. (7-1-93)
- b. "Experience Period" means the most recent period of time for which experience is reported, but not for a period longer than three (3) full years. (7-1-93)
- c. "Incurred Claims" means total claims paid during the experience period, adjusted for the change in claim reserve. (7-1-93)

**020. SUPERVISION OF CREDIT INSURANCE OPERATIONS.**

**01. Responsibilities of Insurer.** Each insurer transacting credit insurance in this state shall be responsible for the settlement, adjustment and payment of all claims and shall also be responsible for conducting a thorough periodic review of creditors with respect to their credit insurance business with such creditors, to assure compliance with the insurance laws of this state and the rules promulgated by the director. Such review shall include, but not be limited to, a verification of the accuracy of premium payments or other identifiable charges, premium refunds, and claims incurred. (7-1-93)

**02. Maintenance of Records.** Records of such reviews shall be maintained for four (4) years for review by the director. (7-1-93)

**021. PROHIBITED TRANSACTIONS.**

The following practices, when engaged in by insurers in connection with the sale or placement of credit insurance, or as an inducement thereto, shall constitute unfair methods of competition and shall be subject to the Unfair Trade Practices Act of this State as outlined in Chapter 13, Title 41, Idaho Code. (7-1-93)

**01. Special Advantages or Services.** The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of producer commissions. (5-8-09)

**02. Deposit by Insurer of Money or Securities Required of Creditor.** Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities which otherwise would be required of the creditor by such bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement. (7-1-93)

**03. Deposit by an Insurer Without Interest or at a Lessor Rate of Interest.** Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor, bank or financial institution to other depositors of like amounts and terms. This paragraph shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business. (7-1-93)

**022. PRODUCER'S LICENSE REQUIRED.**

**01. Life and Disability Insurance License or Limited License.** To solicit credit life and credit disability insurance as provided in Chapter 23, Title 41, Idaho Code, and in this rule chapter, a producer must: (5-8-09)

a. Be licensed to sell life and disability insurance in compliance with Chapter 10, Title 41, Idaho Code; or (7-1-93)

b. Be issued a "Limited License" as defined in Section 41-1003(4), Idaho Code, covering only credit life and credit disability insurance, and no individual so licensed shall during the same period hold a license as a producer as to any other or additional major line of insurance. (5-8-09)

**02. Individual, Firm or Corporation.** Sections 41-1004, 41-1005, 41-1007, Idaho Code, provide that a limited producer's limited license for credit life and credit disability insurance shall be issued to individuals, firms or corporations qualifying for such license. Any individual who sells, solicits or negotiates with debtors to purchase individual credit life or credit disability insurance, or who explains such coverage, must be licensed as an insurance producer. Any firm or corporation offering such individual coverage must comply with the provisions of Section 41-1007(2) by having a designated licensed producer, who is an individual responsible for the business entity's compliance with the insurance laws and rules of this state. (5-8-09)

**03. Administration of Group Policy.** Under Section 41-1005(2)(b), Idaho Code, the issuance of group certificates of credit life insurance and credit disability insurance and the performance of other ministerial duties in



connection with group insurance policy administration does not require the person doing such acts to be licensed as a producer provided that no commission is paid for such services. A group policyholder may be reimbursed its expense of administering a group policy without being licensed as a producer, and such reimbursement will not be considered a commission provided it is reasonably computed to equate to the actual administrative expenses. It will be presumed that an amount of reimbursement not exceeding ten percent (10%) of the net written prima facie premium for the group policy is reasonably computed to equate to the administrative expenses of the group policyholder. Amounts exceeding ten percent (10%) of the net written prima facie premium will be presumed to exceed actual administrative expenses unless prior approval to pay such greater amount is secured pursuant to the insurer demonstrating to the director's satisfaction that such higher amount does not exceed the policyholder's actual administrative expenses. For purposes of this subsection, "prima facie premium" means premiums at the rates set forth in Section 014 without adjustment pursuant to Section 018. (5-8-09)

**04. Dividends and Other Compensation Permitted by Law.** Subsections 022.01, 022.02, and 022.03 do not apply to compensation that is otherwise permitted by law, such as the payment of dividends on participating policies. (7-1-93)

**023. DISCLOSURE.**

When a premium or identifiable charge is payable by a debtor for credit insurance coverage offered by a creditor, at the time such insurance is applied for, disclosures shall be made to the principal debtor and copies given and retained, in accordance with State and Federal law. The creditor shall also disclose the optional nature of the coverage, premium or identifiable charge separately by type of coverage, eligibility requirements, and policy limitations and exclusions. These disclosures shall be made prominently above the space for the signature indicating election to obtain such coverage. These disclosures may be made in conjunction with either (1) the Federal Truth-in-Lending disclosure, (2) a Notice of Proposed Insurance, or (3) the insurance policy or certificate. (7-1-93)

**024. SEVERABILITY.**

If any provision or clause of this rule chapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule chapter are declared severable. (7-1-93)

**025. REPEAL OF RULE NO. 19.**

This rule chapter superseded and repealed Rule No. 19 entitled "Credit Life and Disability Insurance," dated October 1, 1969. (7-1-93)

**026. -- 999. (RESERVED)**

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